FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7103 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Ms. Chandana Salgaonkar for Petitioner.

Mr. Pratap Patil for Respondent No.1.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 25, 2005

P.C.

. Rule. Heard forthwith.

. In view of the order to be passed it is not necessary to give detailed reasons. The major grievance of the petitioner herein is that in satisfaction of the decree, they had deposited several amounts. One being sum of Rs.4,25,000/-. From the order of the Executing Court it seems that hte court has accepted the argument on behalf of the Respodnents herein that the sum of Rs.3,91,879/- has been appropriated towards satisfaction of other debts. If that be the case, that will be totally without jurisdiction. The amount deposited

is in satisfaction of the decree will have tobe adjusted in those proceedings. If the respondents herein has any other amounts which are due and payable, it will be open to take out proceedings for recovery of those amounts which they may be entitled to in law. It is not open to the Executing Court to permit adjustment of the amount deposited in execution proceedings towards any other decretal amount. To that extent the order will have to be set aside and the matter remanded back to the executing court to record finding if pursuant to deposit of Rs.4,25,000/- the decree has been satisfied. The other grievance is that inspite of the amount being deposited the Executing Court is not removing the order of attachment. If the Executing Court records a finding in the order that the decree is satisfied, then in terms of the Law, the attachment will have to be lifted.

. In the light of the above, the following order :

. The impugned orders are set aside.

. The matter is remanded back to the trial court for disposing of the proceeding in execution in terms of what is set out in

the body of this judgement.

. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)